

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BSG RESOURCES (GUINEA) LIMITED, BSG
RESOURCES (GUINEA) SARL, and BSG
RESOURCES LIMITED,

Plaintiffs,

v.

GEORGE SOROS, OPEN SOCIETY FOUNDATIONS,
OPEN SOCIETY INSTITUTE, FOUNDATION TO
PROMOTE OPEN SOCIETY, OPEN SOCIETY
FOUNDATION, INC., ALLIANCE FOR OPEN
SOCIETY INTERNATIONAL INC., OPEN SOCIETY
POLICY CENTER, and OPEN SOCIETY FUND,

Defendants.

No. 1:17-cv-02726 (JFK) (OTW)

DECLARATION OF BENJAMIN P. MCCALLEN

I, BENJAMIN P. MCCALLEN, pursuant to 28 U.S.C. § 1746, declare as follows:

I am a member of the bar of this Court and of the law firm of Willkie Farr & Gallagher LLP, counsel for George Soros, Open Society Foundations (“OSF”), Open Society Institute, Foundation to Promote Open Society, Open Society Foundation, Inc. (“OSFI”), Alliance for Open Society International, Inc., Open Society Policy Center, and Open Society Fund (collectively, “Defendants”). I submit this declaration in support of Defendants’ Motion to Compel the Depositions of Benjamin (Beny) Steinmetz and Dag Lars Cramer on May 7, 2021.

1. Attached hereto as **Exhibit A** is a true and correct copy of email correspondence between Plaintiffs’ and Defendants’ counsel, dated May 5–6, 2021.

2. Attached hereto as **Exhibit B** is a true and correct copy of a news article by Paula Dupraz-Dobais titled *How a Mining Corruption Trial Could Be a Turning Point for Dodgy Offshore Companies*, published by SWI, dated January 26, 2021.

3. Attached hereto as **Exhibit C** is a true and correct copy of an article by Marxer & Partner Attorneys-at-Law, titled *The Liechtenstein Foundation*, dated March 23, 2010.

4. Attached hereto as **Exhibit D** is a true and correct copy of a news article by Patrick Radden Keefe titled *Buried Secrets*, published by The New Yorker, dated July 7, 2013.

5. Attached hereto as **Exhibit E** is a true and correct copy of a news article by Franz Wild and Thomas Biesheuvel titled *Steinmetz Stages Guinea Comeback in Sarkozy-Brokered Deal*, published by Bloomberg, dated February 25, 2019.

6. Attached hereto as **Exhibit F** is a true and correct copy of the Second Witness Statement of Benjamin Steinmetz submitted in *BSG Resources Limited, et al. v. Republic of Guinea*, ICSID Case No. ARB/14/22, dated January 10, 2017, available at <https://icsid.worldbank.org/cases/publications/C3765>.

7. Attached hereto as **Exhibit G** is a true and correct copy of a Certification of Benjamin Steinmetz, dated April 9, 2010, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 9, 2019), ECF No. 46-1.

8. Attached hereto as **Exhibit H** is a true and correct copy of testimony by Benjamin Steinmetz to Swiss prosecutors, dated October 18, 2013 with certified English translation, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 9, 2019), ECF No. 46-1.

9. Attached hereto as **Exhibit I** is a true and correct copy of the Funding Agreement between Nysco Management Corp., BSG Resources Limited, and William Callewaert and Malcolm Cohen as joint administrators of BSG Resources Limited, dated

December 18, 2018, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 9, 2019), ECF No. 46-1.

10. Attached hereto as **Exhibit J** is a true and correct copy of a news article titled *When Nicolas Sarkozy Plays a Business Intermediary*, published by Le Monde, dated August 23, 2019 with certified English translation, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 9, 2019), ECF No. 46-1.

11. Attached hereto as **Exhibit K** is a true and correct copy of a press release titled *Settlement of the Dispute between the Republic of Guinea and BSG Resources* by BSG Resources Limited, published by Business Wire, dated February 25, 2019.

12. Attached hereto as **Exhibit L** is a true and correct copy of a news article by Saliou Samb, titled *China-backed Consortium wins \$14 Billion Guinea Iron Ore Deal, Pipping Australia's Fortescue*, published by Reuters, dated November 13, 2019.

13. Attached hereto as **Exhibit M** is a true and correct copy of a declaration made by Malcolm Cohen, dated June 3, 2019, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. June 3, 2019), ECF No. 5.

14. Attached hereto as **Exhibit N** is a true and correct copy of a letter from William Calleweart, on behalf of the Joint Administrators, to all known and contingent creditors of BSG Resources Limited, reporting the progress of the administration between September 6, 2018 to March 5, 2019, dated March 7, 2019, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. June 3, 2019), ECF No. 5-7.

15. Attached hereto as **Exhibit O** is a true and correct copy of the Director's Register of Litigation Solutions Limited, published by the Government of Bermuda's online Registrar of Companies and last accessed on May 7, 2021.

16. Attached hereto as **Exhibit P** is a true and correct copy of the Director's Register of Star West Investments Limited, published by the Government of Bermuda's online Registrar of Companies and last accessed on May 7, 2021.

17. Attached hereto as **Exhibit Q** is a true and correct copy of the Director's Register of Americano Nickel Limited, published by the Government of Bermuda's online Registrar of Companies and last accessed on May 7, 2021.

18. Attached hereto as **Exhibit R** is a true and correct copy of the Director's Register of Americano Nickel Finance Limited, published by the Government of Bermuda's online Registrar of Companies and last accessed on May 7, 2021.

19. Attached hereto as **Exhibit S** is a true and correct copy of a news article titled *Mick Davis and the Team Ready to Take on Beny Steinmetz's Former Iron Ore Asset*, published by Africa Intelligence, dated May 3, 2019.

20. Attached hereto as **Exhibit T** is a true and correct copy of the Discovery Order, dated October 21, 2019, in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr.), ECF No. 69.

21. Attached hereto as **Exhibit U** is a true and correct copy of a letter from Vale S.A. to the Honorable Vernon S. Broderick, dated December 8, 2020, in *Vale S.A. v. BSG Resources Limited*, No. 1:19-cv-03619 (S.D.N.Y. Apr 23, 2019), ECF No. 66.

22. Attached hereto as **Exhibit V** is a true and correct copy of a news article by titled *Swiss Court Jails Israeli Diamond Magnate for 5 Years for Corruption*, published by Times of Israel, dated January 22, 2021.

23. Attached hereto as **Exhibit W** is a true and correct copy of a news article by Stephanie Nebehay, titled *Swiss Court Finds Israeli Businessman Beny Steinmetz Guilty of Corruption*, published by Reuters, dated January 22, 2021.

24. Attached hereto as **Exhibit X** is a true and correct copy of a news article by Hugo Miller, titled *Steinmetz Sentenced to 5 Years in Jail in Swiss Bribery Case*, published by Bloomberg, dated January 22, 2021.

25. Attached hereto as **Exhibit Y** is a true and correct copy of the First Witness Statement of Dag Lars Cramer, dated February 29, 2016, in *BSG Resources Limited, et al. v. Republic of Guinea*, ICSID Case No. ARB/14/22, dated January 10, 2017, available at <https://icsid.worldbank.org/cases/publications/C3765>.

26. Attached hereto as **Exhibit Z** is a true and correct copy of the Special Resolution on Change of Name, dated February 22, 2011, and the Certificate of Incorporation on Change of Name, dated March 7, 2011, filed by Onyx Financial Advisors (UK) Limited published by the United Kingdom's Companies House and last accessed on May 7, 2021.

27. Attached hereto as **Exhibit AA** is a true and correct copy of the Statement of the Register of BSG Resources Limited, published by the Guernsey Registry, dated February 26, 2018, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 9, 2019), ECF No. 46-1.

28. Attached hereto as **Exhibit BB** is a true and correct copy of excerpts of the transcript of the deposition of Peter Driver, dated June 18, 2020, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 2, 2020), ECF No. 118-2.

29. Attached hereto as **Exhibit CC** is a true and correct copy of a news article by Barbara Lewis, titled *Administrators Seek to Return Steinmetz's Mining Firm BSGR to Solvency*, published by Reuters, dated March 8, 2018.

30. Attached hereto as **Exhibit DD** is a true and correct copy of a letter from the Joint Administrators to the Honorable Sean H. Lane, dated November 9, 2020, in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr.), ECF No. 126.

31. Attached hereto as **Exhibit EE** is a true and correct copy of email correspondence from Michael Lazaroff to Defendants' counsel, dated March 24, 2021.

32. Attached hereto as **Exhibit FF** is a true and correct copy of the Approved Judgment in *Vale S.A. v. BSG Resources Limited* before the High Court of Justice Business and Property Courts of England and Wales, dated July 30, 2020, as filed in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr. Sept. 2, 2020), ECF No. 118-4.

33. Attached hereto as **Exhibit GG** is a true and correct copy of a letter from Vale S.A. to the Honorable Sean H. Lane, dated September 2, 2020, in *In re BSG Resource Limited*, Case No. 19-11845-SHL (S.D.N.Y. Bankr.), ECF No. 57.

34. Attached hereto as **Exhibit HH** is a true and correct copy of the Initial Disclosures of BSG Resources (Guinea) Limited, BSG Resources (Guinea) Sàrl, and BSG Resources Limited, dated June 26, 2017.

35. Attached hereto as **Exhibit II** is a true and correct copy of the Supplemental Initial Disclosures of BSG Resources (Guinea) Limited, BSG Resources (Guinea) Sàrl, and BSG Resources Limited, dated February 22, 2021.

36. Attached hereto as **Exhibit JJ** is a true and correct copy of email correspondence between Defendants' counsel and Plaintiffs' counsel dated from February 23, 2021 to March 10, 2021.

37. Attached hereto as **Exhibit KK** is a true and correct copy of email correspondence between Gabrielle Antonello, Benjamin McCallen and David Stagman dated from February 26, 2021 to March 3, 2021.

38. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 7, 2021
New York, New York

/s/ Benjamin P. McCallen
Benjamin P. McCallen